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IN THE

Supreme Court of the United States

October Term, 1965

No. 1081

CLIFFORD SEIGMEISTER,
Petitioner,

against

FEDERAL TRADE COMMISSION,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

HAROLD W. WOLFRAM,
Attorney for Petitioner,
1 Wall Street,
New York, New York, 10005.

Of Counsel:
BURKE & BURKE.

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit, entered in this case on December 2, 1965, affirming and enforcing a final cease and desist order issued by the Federal Trade Commission on February 28, 1964.

Opinions Below

The opinion of the United States Court of Appeals for the Eighth Circuit, printed in Appendix A of the petition for writ of certiorari to be filed simultaneously herewith by Benrus Watch Company, Inc., et al., is reported at 352 F. 2d 313. The opinion of the Federal Trade Commission is printed in Appendix C of the said petition for writ of certiorari.

Jurisdiction

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on December 2, 1965. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

Questions Presented

1. Where no evidence is offered to support the complaint of the Federal Trade Commission that the practice of attaching price tickets to watches and advertising those prices constituted a misrepresentation that such preticketed prices were the "usual and regular retail prices" (which term the Commission, in construing the complaint, interpreted to mean the generally prevailing prices for the watches), and where all of the evidence of record is to the contrary, may the Commission nevertheless sustain the charges of the complaint by sole reliance on its *a priori* conclusion that the preticketing practice is so construed by consumers—particularly when the Commission, by enactment, prior to entry of its final order, of its new Guides against Deceptive Pricing, expressly repudiates its view that the practice is so construed?

2. In view of the promulgation of the new Guides against Deceptive Pricing, radically altering the rule of law applied by the Commission in deciding this case, should not petitioner have been afforded an opportunity to demonstrate that the conduct complained of was lawful when measured by the new standard?

3. May the Commission predicate an order with respect to guarantee advertising practices on evidence of practices abandoned prior to the commencement of the Commission proceeding and as to which, in any event, no evidence was offered to demonstrate that they were deceptive?

4. May the Commission issue an order based on a finding that watch bezels (the grooved rims or flanges in which

watch crystals are set) contained less than the minimum amount of gold electroplate prescribed by the Commission's Trade Practice Rules for the Watchcase Industry when the complaint, rather than charging such a violation, charged only that watch cases contained no gold electroplate whatever and had been treated to simulate precious metal and when all of the watches did, in fact, contain substantial quantities of gold electroplate?

Statutes Involved

The statutory provision involved is Section 5(a) (1) of the Federal Trade Commision Act, 15 U. S. C. Section 45(a) (1).

Statement

On December 21, 1964, the United States Court of Appeals for the Eighth Circuit entered an order (Appendix A, *infra,* p. 5) consolidating the petitions for review filed by Benrus Watch Company, Inc., et al. and the petitioner and directing that the said petitions be heard on a joint printed record.

Without in any way conceding that the petitioner formulated, directed or controlled corporate policies and practices, and assuming *arguendo* for the purpose of this petition that he had, the petitioner joins in the *Statement* and in the *Reasons for Granting the Writ,* set forth at pages 3 to 8 and 8 to 14, respectively, of the petition for writ of certiorari filed simultaneously herewith by Benrus Watch Company, Inc., et al.

CONCLUSION

For the reasons set forth in the petition of Benrus Watch Company, Inc., et al., the petition for a writ of certiorari should be granted.

Respectfully submitted,

HAROLD W. WOLFRAM,
Attorney for Petitioner,
1 Wall Street,
New York, New York 10005.

Of Counsel:
BURKE & BURKE.

Appendix A

UNITED STATES COURT OF APPEALS

FOR THE EIGHT CIRCUIT

SEPTEMBER TERM, 1964

No. 17692

BENRUS WATCH COMPANY, INC., ET AL.,

Petitioners,

vs.

FEDERAL TRADE COMMISSION.

ON PETITION TO REVIEW ORDER OF THE FEDERAL TRADE COMMISSION.

No. 17821

CLIFFORD SEIGMEISTER,

Petitioner,

vs.

FEDERAL TRADE COMMISSION.

ON PETITION TO REVIEW ORDER OF THE FEDERAL TRADE COMMISSION.

There is before the Court a motion to consolidate these petitions for review from an order of the Federal Trade Commission entered February 28, 1964. The motion for consolidation has been filed by counsel for petitioner in our No. 17821. There has been no response to the motion on the part of counsel for petitioner in our No. 17692 and counsel

for the respondent has advised the Clerk of this Court that respondent will not oppose the motion to consolidate.

Counsel for petitioners in each of these causes have also filed motions for extensions of time in which to serve and file printed record and brief. Counsel for the respondent has advised the Clerk of the Court that there will be no objection to the requested extension so long as the causes remain on the March 1965 calendar.

On consideration of the foregoing, it is now here ordered that the petitions for review are hereby consolidated and will be heard on one printed record bearing the numbers and styles of both petitions for review. Counsel for the petitioners may file a joint or separate briefs as they think appropriate.

The joint printed record and petitioners' brief or briefs are to be served and filed on or before January 13, 1965. Respondent may have to and including March 1, 1965, in which to serve and file its joint brief and petitioners may have to and including March 5, 1965, in which to serve and file joint or separate reply brief or briefs.

December 21, 1964.